

“(B)(i) the nature and location of each of the facilities or places at which the electronic surveillance will be directed, if known; and

“(ii) if any of the facilities or places are unknown, the identity of the target;” and

(2) in paragraph (2)—

(A) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively; and

(B) by inserting after subparagraph (A), the following:

“(B) in cases where the facility or place at which the surveillance will be directed is not known at the time the order is issued, that the surveillance be conducted only when the presence of the target at a particular facility or place is ascertained by the person conducting the surveillance;”

SEC. 3. LIMITATION ON AUTHORITY TO DELAY NOTICE OF SEARCH WARRANTS.

(a) IN GENERAL.—Section 3103a of title 18, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking “may have an adverse result (as defined in section 2705)” and inserting “will—

“(A) endanger the life or physical safety of an individual;

“(B) result in flight from prosecution; or

“(C) result in the destruction of, or tampering with, the evidence sought under the warrant;” and

(B) in paragraph (3), by striking “within a reasonable period” and all that follows and inserting “not later than 7 days after the execution of the warrant, which period may be extended by the court for an additional period of not more than 7 days each time the court finds reasonable cause to believe, pursuant to a request by the Attorney General, the Deputy Attorney General, or an Associate Attorney General, that notice of the execution of the warrant will—

“(A) endanger the life or physical safety of an individual;

“(B) result in flight from prosecution; or

“(C) result in the destruction of, or tampering with, the evidence sought under the warrant.”; and

(2) by adding at the end the following:

“(c) REPORTS.—

“(1) IN GENERAL.—Every 6 months, the Attorney General shall submit a report to Congress summarizing, with respect to warrants under subsection (b), the requests made by the Department of Justice for delays of notice and extensions of delays of notice during the previous 6-month period.

“(2) CONTENTS.—Each report submitted under paragraph (1) shall include, for the preceding 6-month period—

“(A) the number of requests for delays of notice with respect to warrants under subsection (b), categorized as granted, denied, or pending; and

“(B) for each request for delayed notice that was granted, the number of requests for extensions of the delay of notice, categorized as granted, denied, or pending.

“(3) PUBLIC AVAILABILITY.—The Attorney General shall make the report submitted under paragraph (1) available to the public.”

(b) SUNSET PROVISION.—

(1) IN GENERAL.—Subsections (b) and (c) of section 3103a of title 18, United States Code, shall cease to have effect on December 31, 2005.

(2) EXCEPTION.—With respect to any particular foreign intelligence investigation that began before the date on which the provisions referred to in paragraph (1) cease to have effect, or with respect to any particular offense or potential offense that began or occurred before the date on which the provisions referred to in paragraph (1) cease to have effect, such provisions shall continue in effect.

SEC. 4. PRIVACY PROTECTIONS FOR LIBRARY, BOOKSELLER, AND OTHER PERSONAL RECORDS UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) APPLICATIONS FOR ORDERS.—Section 501(b)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(b)(2)) is amended—

(1) by striking “shall specify that the records” and inserting “shall specify that—

“(A) the records;” and

(2) by striking the period at the end and inserting the following: “; and

“(B) there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power.”

(b) ORDERS.—Section 501(c)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(c)(1)) is amended by striking “finds that” and all that follows and inserting “finds that—

“(A) there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power; and

“(B) the application meets the other requirements of this section.”

(c) OVERSIGHT OF REQUESTS FOR PRODUCTION OF RECORDS.—Section 502(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1862) is amended to read as follows:

“(a) On a semiannual basis, the Attorney General shall, with respect to all requests for the production of tangible things under section 501, fully inform—

“(1) the Select Committee on Intelligence of the Senate;

“(2) the Committee on the Judiciary of the Senate;

“(3) the Permanent Select Committee on Intelligence of the House of Representatives; and

“(4) the Committee on the Judiciary of the House of Representatives.”

SEC. 5. PRIVACY PROTECTIONS FOR COMPUTER USERS AT LIBRARIES UNDER NATIONAL SECURITY AUTHORITY.

Section 2709 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking “A wire” and inserting the following:

“(1) IN GENERAL.—A wire”; and

(B) by adding at the end the following:

“(2) EXCEPTION.—A library shall not be treated as a wire or electronic communication service provider for purposes of this section.”; and

(2) by adding at the end the following:

“(f) DEFINED TERM.—In this section, the term ‘library’ means a library (as that term is defined in section 213(2) of the Library Services and Technology Act (20 U.S.C. 9122(2)) whose services include access to the Internet, books, journals, magazines, newspapers, or other similar forms of communication in print or digitally to patrons for their use, review, examination, or circulation.”

SEC. 6. EXTENSION OF PATRIOT SUNSET PROVISION.

Section 224(a) of the USA PATRIOT ACT (18 U.S.C. 2510 note) is amended—

(1) by striking “213, 216, 219;” and

(2) by inserting “and section 505” after “by those sections)”

Mr. DURBIN. Mr. President, the USA PATRIOT Act, the counterterrorism bill that the Bush administration pushed through Congress after the September 11 terrorist attacks, has been the focus of much controversy in recent months. I voted for the PATRIOT Act, as did the vast majority of my colleagues in the Congress. I believed

then, and I still believe, that the PATRIOT Act made many reasonable and necessary changes in the law.

For example, the PATRIOT Act tripled the number of Federal agents at the Northern border, an area that had been greatly understaffed. It allocated \$100 million to upgrade technology for monitoring the Northern border. It expedited the hiring of FBI translators, who were desperately needed to translate intelligence after 9/11.

Most importantly, the PATRIOT Act updated information technology and enhanced information sharing between Federal agencies, especially the FBI and the CIA. As we learned after 9/11, the failure of these agencies to communicate with each other may have prevented law enforcement from uncovering the 9/11 plot before that terrible day.

However, the PATRIOT Act contains several controversial provisions that I and many of my colleagues believe went too far. The Bush administration placed Congress in a very difficult situation by insisting on including these provisions in the bill. We were able to amend or sunset some of the most troubling components of the bill. However, many remained in the final version. As a result, the PATRIOT Act makes it much easier for the FBI to monitor the innocent activities of American citizens with minimal or no judicial oversight. For example:

The FBI can now seize records on the books you check out of the library or the videos you rent, simply by certifying that the records are sought for a terrorism or intelligence investigation, a very low standard. A court no longer has authority to question the FBI's certification. The FBI no longer must show that the documents relate to a suspected terrorist or spy.

The FBI can conduct a “sneak and peek” search of your home, not notifying you of the search until after a “reasonable period,” a term which is not defined in the PATRIOT Act. A court is now authorized to issue a “sneak and peek” warrant where a court finds “reasonable cause” that providing immediate notice of the warrant would have an “adverse result,” a very broad standard. The use of “sneak and peek” warrants is not limited to terrorism cases.

The FBI can obtain a “John Doe” roving wiretap, which does not specify the target of the wiretap or the place to be wiretapped. This increases the likelihood that the conversations of innocent people wholly unrelated to an investigation will be intercepted.

Many in Congress did not want to deny law enforcement some of the reasonable reforms contained in the PATRIOT Act that they needed to combat terrorism. So, we reluctantly decided to support the administration's version of the bill, but not until we secured a commitment that they would be responsive to Congressional oversight and consult extensively with us before seeking any further changes in the law.